

To: Banking and Financial Services Committee

From: Potestivo & Associates, P.C.

Date: November 3, 2011

RE: House Bills 4542, 4543 and 4544

Dear Representatives,

Thank you again for all of your work on this Statute and for giving us an opportunity to share our insight into its application. Our law firm, Potestivo and Associates, P.C., of Rochester Hills, Michigan, represents mortgage servicers managing loans in Michigan. As part of our representation, we handle a large number of foreclosures under MCL §§ 600.3201, *et seq.*, (“Foreclosure by Advertisement Statute”). Our firm also deals with any litigation that arises from the foreclosures. As a result, we have come to see a pattern in the issues that arise relating to the Statute. The following outlines amendments that would further clarify the rights and responsibilities of homeowners and lenders in order to increase efficiency in the loan modification process.

Substitute For House Bill No. 4543 Sec. 3205a(1)(j)

Suggested change: “The number of days in the redemption period that will be available to the borrower...” to “The length of the redemption period that will be available to the borrower.” This change is designed to eliminate varying interpretations of which day redemption expires or the idea that the number of days should be listed in lieu of the actual date upon which redemption expires, which is used currently.

Specify that Loan Modification Applies Only to First Mortgages

The loan modification section of the Foreclosure by Advertisement statute provides a goal that the modified loan puts the homeowner’s mortgage-related debt to 38% of the homeowner’s income. If the lender has modified the first mortgage to meet the 38% target, any modification of junior liens would be in excess of the 38% target. However, the statute does not

explicitly state that it only applies to first mortgages. Amending the statute to specifically state the loan modification requirements do not apply to second mortgages, HELOCs or any other lines of credit would reduce homeowner confusion.

Language Clarification

There are three other areas that have been the subject of litigation. First, under the statute, the lender's representative is required to provide a homeowner, upon the homeowner's request, with "a copy of the program, process, or guidelines under which the determination under subsection (1) was made."¹ However, the statute itself provides the guidelines for modification. We believe removal of this requirement should be considered.

Second, when some homeowners are not provided with loan modification because they do not qualify and no alternative agreement is reached, the homeowners bring suit against the mortgagee asserting the statute requires the mortgagee to modify. Although the language is clear, we believe that amending the statute to specifically provide that lenders are not required to offer a loan modification where the homeowner does not qualify or where no agreement is reached would reduce mortgagor confusion and related litigation.

Finally, as to the language of the statute regarding a target goal of reaching a 38% Debt-To-Income (DTI) ratio on mortgage payments for the homeowner,² the statute should specifically state that homeowners whose mortgage payments are already at or below the 38% DTI are not eligible for loan modification.

Effective Date Clarification

We suggest that the effective date of these bills once passed be set for 30-60 days after the bills are signed into law to enable all affected parties time to implement the procedural changes necessary to ensure compliance.

¹ MCL § 600.3205c(5)(b).

² MCL § 600.3205c.

As an organization that provides legal services for lenders and loan servicers, we appreciate your consideration of our proposed amendments to the Michigan Foreclosure by Advertisement statute. We believe that these changes will enhance the statute and provide the best results for homeowners and loan servicers/mortgagees attempting to provide distressed homeowners with a loan modification that will help the homeowners keep their homes.

Respectfully submitted,
Potestivo & Associates, P.C.

